LIBRARY
SUPREME COURT, U. S

No. 798

FILED
NOV 7 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

DONALD J. ANGELINI,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

ANNA R. LAVIN
53 West Jackson Blvd.
Chicago, Illinois 60604

RICHARD E. GORMAN
One North LaSalle Street
Chicago, Illinois 60602
Attorneys for Petitioner

UNITED STATES LAW PRINTING CO., CHICAGO, ILL. 60618 LA review 5-6581

INDEX

	PAGE
Order and Opinion of the Court Below	1
Statement of Jurisdiction	2
Questions Presented for Review	3
Statutes Involved	3
Statement of the Case	6
The Evidence	7
Reasons for Granting the Writ	10
Conclusion	13

Petitioner's Appendix

Opinion, United States Court of Appeals	App. 1
Order Affirming	App. 5
Order Denying Petition for Rehearing	App. 6

AUTHORITIES CITED

Cases

Albertson v. Subversive Activities Control Board, 382 U.S. 70, 78	10, 12
Lewis v. United States, 348 U.S. 419	10
United States v. Kahriger, 345 U.S. 22	10

Miscellaneous

Criminal Law Reporter 2034	12
Fifth Amendment	11
Illinois Revised Statutes, Chap. 38, Secs. 28-1-28-3	11
Illinois Revised Statutes, Chap. 38, Sec. 28-4 (1961)	11
26 U.S.C. 4411 and 4412	12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No.

DONALD J. ANGELINI,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Donald J. Angelini, respectfully prays a Writ of Certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit in the case of United States of America, Libelant-Appellee, vs. United States Coin and Currency in the Amount of $8,674.00, Respondent, Donald J. Angelini, Claimant-Appellant, No. 15502.

The Findings of Fact, Conclusions of Law, and Judgment Order of the United States District Court for the Northern District of Illinois, Eastern Division, were entered on August 25, 1965. They are not reported, but ap-

pear in the printed appendix filed, and certified by the Clerk of the United States Court of Appeals for the Seventh Circuit as a part of the record and transmitted herewith.

The opinion of the United States Court of Appeals for the Seventh Circuit, affirming such judgment, was filed on June 27, 1967, and is not yet reported, but is set forth in petitioner's appendix hereto (*infra*, pages App. 1-4*), and in the certified copy of the record.

Petition for Rehearing was denied on August 9, 1967. No opinion was rendered on the Petition for Rehearing, and the Order denying such petition is not reported, but is set forth in the appendix hereto, (*infra*, pages App. 6) and in the certified copy of the record.

STATEMENT OF JURISDICTION

The order of the United States Court of Appeals for the Seventh Circuit affirming the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, was filed on June 27, 1967. On August 9, 1967, it was ordered that the Petition for Rehearing be denied. These orders appear in Petitioner's appendix hereto, (*infra*, pages App. 5-6). This petition is filed within 90 days of the denial of the Petition for Rehearing in the United States Court of Appeals for the Seventh Circuit. The jurisdiction of this court is invoked under 28 U.S.C. Section 1254(1).

---

* "(App. .....)" refers to supplemental appendix, *infra*. "(A. .....)" refers to appendix filed in United States Court of Appeals for the Seventh Circuit.

QUESTIONS PRESENTED

1. Do not the federal wagering tax statutes here involved (and on the basis of which the respondent monies were declared forfeit) violate the petitioner's privilege against self-incrimination guaranteed by the Fifth Amendment?

2. Should not this court especially in view of its recent decision in *Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70 (1965) overrule *United States* v. *Kahriger*, 345 U.S. 22 (1953) and *Lewis* v. *United States*, 348 U.S. 419 (1955)?

STATUTES INVOLVED

"§4411. *Imposition of tax*

"There shall be imposed a special tax of $50 per year to be paid by each person who is liable for tax under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable. Aug. 16, 1954, c. 736, 68A Stat. 527."

"§4412. *Registration*

"(a) *Requirement.*—Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district—

"(1) his name and place of residence;

"(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

"(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

"(b) *Firm or company.*—Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

"(c) *Supplemental information.* — In accordance with regulations prescribed by the Secretary, he or his delegate may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter. Aug. 16, 1954, c. 736, 68A Stat. 527."

"§4901. *Payment of tax*

"(a) *Condition precedent to carrying on certain business.*—No person shall be engaged in or carry on any trade or business subject to the tax imposed by section 4411 (wagering), 4461(a) (1) (coin-operated gaming devices), 4721 (narcotic drugs), or 4751 (marihuana) until he has paid the special tax therefor.

"(b) *Computation.*—All special taxes shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

"(c) *How paid.*—

"(1) *Stamp.*—All special taxes imposed by law shall be paid by stamps denoting the tax.

"(2) *Assessment.*—

"For authority of the Secretary or his delegate to make assessments where the special taxes have not been duly paid by stamp at the time and in the manner provided by law, see subtitle F.

Aug. 16, 1954, c. 736, 68A Stat. 593; June 21 1965, Pub.L. 89-44, Title IV, §405(b), 79 Stat. 149."

"§7302. *Property used in violation of internal revenue laws*

It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws. Aug. 16, 1954, c. 736, 68A Stat. 867."

STATEMENT OF THE CASE

On February 18, 1964, a libel was filed herein seeking to forfeit the respondent, $8,674.00, stating as a cause of action that from about August 1 to August 24, 1963, one Donald Angelini was operating a business in violation of Title 26, U.S.C., Section 4401, 4411, 4412, and 4901, and that on one or more of those dates between August 1 and August 24, 1963, the respondent monies had been used or were intended to be used in violation of the Internal Revenue Laws of the United States. It was further alleged in said libel that on August 24, 1963, the respondent monies were seized by agents of the United States Treasury Department. (A. 6)

On or about June 3, 1964, leave was given to Donald Angelini to intervene and file his claim and answer, which he did, claiming ownership of the respondent monies, and, answering the libel, admitted the seizure of the respondent monies from his person, and substantially denied all other allegations, including that the monies were forfeit to the United States of America. (A. 2)

On June 15 and 16, 1965, the case was heard by the Honorable Bernard M. Decker, sitting without a jury, and taken under advisement. (A. 3-4, 8-39)

On August 25, 1965, the Court entered its written Findings of Fact and Conclusions of Law and Judgment Order declaring the respondent monies forfeit to the District Director of Internal Revenue. (A. 40-42)

In essence the court found that from August 1 to 24 of 1963, there was being operated and conducted a bookmaking business in Sportman's Park, Cicero, Illinois, without payment of the occupational tax of $50.00 as required

by 26 U.S.C. 4411 and without registration with the District Director of Internal Revenue as required by 26 U.S.C. 4412; that, thus, the wagering business was being operated and conducted in violation of 26 U.S.C. 4901. The court also found, as a fact, that the respondent monies in the amount of $8,674.00 was being used in this bookmaking business and was an integral part of the business and was intended to be used in violation of the Internal Revenue laws. The court thus concluded that the said respondent monies were forfeit to the United States of America under the provisions of 26 U.S. 7302. (A. 40-41)

THE EVIDENCE

Between the dates, August 1 and 24, 1964, Internal Revenue had a vast surveillance for the purpose of observing wagering activities (other than pari-mutuals) at Sportmans Park Race Track in Cicero, Illinois, a town bordering on the western outskirts of Chicago. The claimant-petitioner, Donald J. Angelini was one of the persons who came within the orbit of that surveillance. There was no occasion upon which this petitioner is shown to have accepted any wagers. No Internal Revenue Agent made wagers with him (A. 23). Though agents were given money to make wagers at Sportmans, and though one Agent Potter was assigned to make wagers or attempt to make wagers with the petitioner, he never did so. (A. 30) Though the agents were given marked money for the purpose of making bets on August 24, and at least ten of them had the marked money, no marked money was recovered from Donald J. Angelini or is part of the respondent monies. (A. 31) However, Donald J. Angelini was seen in the course of the surveillance accepting money from some persons and giving money to other persons. Some of the persons to whom he gave money and some of those from whom

he accepted money during the month of August were in the wagering business. It is by association of the petitioner with those persons—some of whom had accepted wagers from Internal Revenue Agents—that this money was declared forfeit. (A. 8-28)

Arrest warrants issued for many of the persons under surveillance, petitioner Donald Angelini among them, and they were executed on August 24, 1963. When Mr. Angelini was served with the arrest warrant, he was taken to the United States Courthouse and there directed to empty his pockets. Included in the effects in his pockets were the respondent moneys. (A. 24) Also on his person were documents which an expert government witness testified were recap sheets. (A. 35-39) These recap sheets corresponded in some particulars with betting cards taken from another person arrested, one Joseph Altiere. (A. 34-39)

In the United States Court of Appeals for the Seventh Circuit the petitioner complained about the insufficiency and illegality of the evidence upon which the forfeiture rested and that the claimed statutory basis for forfeiture was unconstitutional and void.

The Court of Appeals for the Seventh Circuit rejected the claim of insufficiency and illegality, and on the constitutional issue ruled as follows:

> "The judgment below was based on two provisions of the wagering statutes requiring registration and payment of an occupational tax. The claimant urges that those provisions, namely, Sections 4411 and 4412 of the Internal Revenue Code (26 USC §§ 4411 and 4412), violate the privilege against self-incrimination contained in the Fifth Amendment. Knowing that the Supreme Court was reconsidering this question, we withheld releasing this opinion pending the outcome

of *Marchetti* v. *United States,* 385 U.S. 1000, and *Grosso* v. *United States,* 385 U.S. 810. However, at the close of its last Term, the Supreme Court restored those two cases to the docket for reargument during its October 1967 Term. Rather than delay this litigation further, we reject claimant's constitutional argument on the authority of *United States* v. *Kahriger,* 345 U.S. 22, and *Lewis* v. *United States,* 348 U.S. 419; but cf. *Albertson* v. *Subversive Activities Control Board,* 382 U.S. 70." (Op. 15502, pgs. 3-4)

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

I.

THE REQUIREMENTS OF THE WAGERING TAX STATUTE (26 U.S.C. 4411 AND 4412) ARE IN CONFLICT WITH THE CONSTITUTIONAL PRIVILEGE AGAINST SELF-INCRIMINATION UNDER THE FIFTH AMENDMENT, AND THE SEIZURE AND FORFEITURE OF THE MONIES INVOLVED IN THIS ACTION FOR FAILURE TO COMPLY WITH THOSE UNCONSTITUTIONAL ACTS OF CONGRESS VIOLATE THE PROSCRIPTION AGAINST DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW, SINCE THE SEIZURE AND FORFEITURE CONSTITUTE THE EXERTION OF A FORBIDDEN POWER.

The decision of the United States Court of Appeals for the Seventh Circuit (*Infra,* App. 1-4) clearly recognizes that the issue presented by this petition will be resolved by this court's determination of the questions presented by *Marchetti* v. *United States* and *Grosso* v. *United States,* respectively numbers 2 and 12, October Term, 1967, of this Court. It expressly issued the opinion in this case only to avoid further delay in the litigation and in reliance on *United States* v. *Kahriger,* 345 U.S. 22 and *Lewis* v. *United States,* 348 U.S. 419, but recognized that those cases may have been overruled by this court's later decision in *Albertson* v. *Subversive Activities Control Board,* 382 U.S. 70.

We recognize the disposition of this cause will be determined by this court's ruling in *Marchetti* and *Grosso.* In fact, the questions presented on this petition are admittedly plagiarized from those presented in the *Marchetti* case.

This court has already had the very able argument of counsel in those cases. It would be an imposition to make this an extended petition, and it will not be.

We submit to this court, as it has already been submitted to this court, that the requirement that gamblers not only pay the federal wagering occupational tax, but also fill out a registration form such as Form 11-C clearly renders them vulnerable to state convictions for gambling in violation of the prohibition against self-incrimination under the Fifth Amendment. To comply with the requirements of Form 11-C is an induced confession to violations of state law. Certainly in the State of Illinois gambling is permeated with criminality and the registration requirements cannot be complied with without incrimination. See Chapter 38, Sections 28-1 through 28-3, Illinois Revised Statutes, 1961. But see particularly Section 28-4 of Chapter 38, of the Illinois Revised Statutes which reads as follows:

> "§ 28—4. Registration of Federal Gambling Stamps
>
> Every person who has purchased a Federal Wagering Occupational Tax Stamp, as required by the United States under the applicable provisions of the Internal Revenue Code, or a Federal Gaming Device Tax Stamp, as required by the United States under the applicable provisions of the Internal Revenue Code, shall register such stamp or stamps with the county clerk's office in which he resides and the county clerk's office of each and every county in which he conducts any business. Any person who violates this Section shall be fined not to exceed $200 or imprisoned in a penal institution other than the penitentiary not to exceed 6 months, or both. For each subsequent violation, such person shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both. 1961, July 28, Laws 1961, p. 1983, § 28—4."

Thus, at least under Illinois law, the first invasion of the privilege against self-incrimination under 26 U.S.C. 4411 and 4412 becomes an unending prelude to further self-incrimination.

We have had the advantage of certain questions that were asked in the course of the hearing on the *Marchetti* case in this court. Particularly the following:

> "Mr. Justice Fortas: What would result if a person, a taxpayer, was asked by the federal government to answer the question 'Are you engaged in the business of accepting wagers of your own account?' Could a citizen refuse on Fifth Amendment grounds to answer such a question?"
>
> "Mr. Beytagh answered that there is a collision in such a circumstance between the Fifth Amendment and such a procedure." Crim. Law Reptr. 2034.

Particularly appropriate to the focus of Mr. Justice Fortas' question is the statement of this court in *Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70 at page 78:

> "These cases involved questions to witnesses on the witness stand, but if the admission cannot be compelled in oral testimony, we do not see how compulsion in writing makes a difference for constitutional purposes."

One of the questions raised in the *Marchetti* case was whether the obligation to pay the special occupational tax required by 26 U.S.C. 4411 can be satisfied without filing the registration statement provided for by 26 U.S.C. 4412. While we are sure that this has been adequately covered in the arguments heretofore had before this court, we would interject that, by virtue of Form 11-C the interdependence of one statute upon the other has been established.

We especially refer the court to instruction number two on the back of Form 11-C, which so firmly ties in the payment requirement with the registration requirement as to make them one.

> "2. *When To File.—(a) First and Renewal Returns and Applications for Registry* — Form 11-C serves two purposes: (A) A special tax return and (B) an application for registry."

It is submitted that the same questions are presented to this court in this petition as the court is presently reviewing in *Marchetti* and *Rosso*, and we respectfully suggest that the questions here presented be considered by this court together with those cases.

CONCLUSION

Wherefore, for the above and foregoing reasons, this petitioner prays that a Writ of Certiorari be issued to the United States Court of Appeals for the Seventh Circuit in this case.

Respectfully submitted,

ANNA R. LAVIN
RICHARD E. GORMAN
Attorneys for Petitioner